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No. 92-1288

In The

Supreme Court of the United States

October Term, 1992

HANK WILLIAMS, JR., ACUFF-ROSE-OPRYLAND MUSIC, INC., MILENE-OPRYLAND MUSIC, INC., WESLEY H. ROSE and ROY ACUFF, Individually and as Trustees in Liquidation for Stockholders of Fred Rose Music, Inc. and Milene Music, Inc., FRED ROSE MUSIC, INC., and MILENE MUSIC, INC.,

Petitioners,

vs.

CATHY YVONNE STONE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF OF PETITIONERS

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I. QUESTION PRESENTED

1. WHETHER PETITIONERS' CLAIM THAT THEY HAVE BEEN DENIED DUE PROCESS OF LAW BECAUSE THE COURT OF APPEALS IMPROPERLY GAVE FULL FAITH AND CREDIT TO A CONSTITUTIONALLY INFIRM JUDGMENT OF THE ALABAMA SUPREME COURT AND FAILED TO CONDUCT AN INDEPENDENT INQUIRY INTO THE ADEQUACY OF THE ALABAMA JUDGMENT IS RENDERED MOOT BY AN ALLEGED SETTLEMENT OF THE ALABAMA PROCEEDINGS.

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

REPLY BRIEF OF PETITIONERS

Petitioners, other than Hank Williams, Jr., respectfully submit this Reply Brief in response to Respondent's Brief in Opposition to Petition for Writ of Certiorari. Petitioners herein address the entirely new issue of mootness raised by Respondent, and respectfully repeat their petition to this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, contained in its opinion

decided July 13, 1992, in the matter of *Cathy Yvonne Stone v. Hank Williams, Jr., et al.*, No. 91-7706.

III. REASONS FOR GRANTING THE WRIT

Petitioners filed their Petition for Writ of Certiorari on January 29, 1993. A comprehensive statement of the facts and procedural history of this case and collateral proceedings is contained in the Petition. Respondent, in her Brief in Opposition to Petition for Writ of Certiorari, first raises the issue of mootness, stating that Respondent and Petitioner Williams, Jr. settled the collateral Alabama action regarding the estate of Hank Williams, Sr. (Brief in Opp. at 3). The other Petitioners (1) are not parties to any such settlement, (2) have been refused information regarding the terms of such purported agreement by Respondent and Williams, Jr., and (3) have determined that the Alabama proceedings have not been dismissed. Respondent argues that this alleged settlement renders moot Petitioners' claim of denial of due process of law. For the reasons provided below, Respondent's argument has no merit and the Court should grant Petitioners' request for issuance of a writ of certiorari.

Petitioners have endeavored to restrict their Reply to issues of law and to the record of this case. However, for the record, Petitioners object to Respondent's seeking to improperly expand the record by allegations of a settlement of the Alabama proceedings, which allegations should be ignored in determining whether to grant Petitioners' request for the issuance of a writ of certiorari.

A. PETITIONERS' CLAIM OF DENIAL OF DUE PROCESS OF LAW HAS NOT BEEN RENDERED MOOT BY ANY ALABAMA SETTLEMENT.

1. Petitioners Other Than Williams, Jr. Are Not Parties to Any Settlement.

Petitioners' first reason for requesting that this Court grant their petition for certiorari is that Petitioners have been denied due process of law because the Court of Appeals improperly gave full faith and credit to a constitutionally infirm judgment of the Alabama Supreme Court, and failed to conduct an independent inquiry into the adequacy of the Alabama judgment. Respondent errs in claiming that this issue has been rendered moot by any settlement to which these Petitioners did not agree, and which took place in the context of collateral proceedings to which the majority of Petitioners were not parties. A settlement agreement cannot resolve issues among parties that were not parties to such settlement.

Except for Petitioner Williams, Jr., the Petitioners were not parties to any such Alabama settlement, nor have their interests been represented in such settlement. Neither Respondent nor Williams, Jr. will disclose the terms of such settlement to the other parties in this appeal or provide them with a copy of such purported agreement. Respondent and Williams, Jr. have enveloped this alleged final Alabama settlement in a shroud of secrecy which secrecy can only serve to further support Petitioners' claim of denial of due process by demonstrating the lack of representation by Williams, Jr. of these Petitioners' interests in the Alabama proceedings.

2. Even If Petitioners Are Bound by the Alabama Settlement Agreement, Respondent has Not Established That Such Settlement Settles Any Important Issues Raised by Petitioners.

Even if the alleged Alabama settlement agreement is somehow binding on these Petitioners, Respondent has completely failed to establish that such settlement does, in fact, render any of Petitioners' claims moot. A question is moot *only* if it presents no live controversy or if the parties lack cognizable interests in the outcome. *See, e.g., Powell v. McCormack,* 395 U.S. 486, 496 (1969). In addition, a settlement does not moot issues that the parties to the settlement did not intend to settle. *See Nixon v. Fitzgerald,* 457 U.S. 731, 743-44 (1982). Here, Respondent has failed to establish that there is no live controversy. *See County of Los Angeles v. Davis,* 440 U.S. 625, 631 (1979); *Northwest Envtl. Defense Center v. Gordon,* 849 F.2d 1241 (9th Cir. 1988) (burden of proving mootness is heavy). In fact, a live controversy exists regardless of any settlement. Respondent has not produced any settlement agreement, and as noted above, the Petitioners who are not parties to such agreement have not been able to discover its terms. Only upon inspection of such settlement agreement can it be determined whether it has any effect on this litigation. Respondent cannot rely upon vague assertions of the content of such settlement agreement in opposing the Petition for Writ of Certiorari, and thus has completely failed to establish that Petitioners' claims are moot in any manner whatsoever.

A settlement between Williams, Jr. and Respondent in the Alabama proceedings in no way affects these Petitioners' argument that the Court of Appeals improperly gave full faith and credit to the Alabama Supreme Court decision. Should this Court grant Petitioners' request and ultimately reverse the Court of Appeals, Petitioners would then have the opportunity to fully defend Respondent's claims on the merits.

IV. CONCLUSION

The Second Circuit's actions in this matter are in conflict with decisions of this Court and other circuits. The Second Circuit has engaged in conduct outside of the usual and accepted course of judicial proceedings. In addition, the Court of Appeals' opinion concerns vitally important questions of federal law which have not ever been, but should be, settled by this Court. Any settlement between Respondent and Williams, Jr. in the collateral Alabama proceedings does not moot any of Petitioners' claims. Petitioners respectfully request that this Court issue a writ of certiorari to review the judgment of the Second Circuit, dated July 13, 1992.

Respectfully submitted,

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